

1 2010?

2 A No.

3 MR. MOSS: I'd like to do that
4 comparison, Your Honor, if I may.

5 JUDGE SIPPEL: Please.

6 MR. MOSS: Do you mind if I use
7 your board?

8 MS. POGORILER: Are specific names
9 going to be used?

10 MR. MOSS: No.

11 (Off the record comments.)

12 MR. MOSS: Mr. Herman, if you
13 could take a look at the Golf -- Sir, you are
14 familiar with Venn diagrams. Is that right?

15 JUDGE SIPPEL: You ought to spell
16 that for the record.

17 MR. MOSS: It's V-E-N-N, Your
18 Honor.

19 JUDGE SIPPEL: V-E-N-A?

20 MR. MOSS: V-E-N-N.

21 JUDGE SIPPEL: V-E-N-N.

22 MR. MOSS: I believe it's named

1 after Mr. Venn.

2 MR. CARROLL: Your Honor, we're
3 going to need an addendum to the glossary.

4 JUDGE SIPPEL: Well, I did want to
5 raise that with you.

6 (Laughter.)

7 BY MR. MOSS:

8 Q Mr. Herman, if you can please take
9 a look at Exhibit B which is the Golf top 30
10 advertisers and also the Tennis Channel top 30
11 advertisers. I'll draw them right here. Now,
12 sir, you can use Exhibit C also if it's
13 helpful for you. But how many of Golf
14 Channel's top 30 advertisers in 2010 were also
15 Tennis Channel's top 30 advertisers in 2010?

16 A Are you asking me to go through
17 the chart and calculate?

18 Q Well, sir, you're familiar with
19 Tennis Channel's top 30 advertisers. Right?

20 A Yes.

21 Q The chart, the green highlighting
22 on the chart, sir, are the only overlaps.

1 JUDGE SIPPEL: What chart are you
2 on now? C chart?

3 MR. MOSS: The B chart, Your
4 Honor. That's the right chart, but that's the
5 Golf Chart.

6 JUDGE SIPPEL: No, I've got
7 Versus. I've got to move back to Golf.

8 MR. MOSS: It's the preceding
9 chart, Your Honor.

10 JUDGE SIPPEL: Got it. Thank you.

11 THE WITNESS: The ones that I see
12 --

13 BY MR. MOSS:

14 Q Well, Mr. Herman, I'll just
15 caution you or do we have --

16 A Okay.

17 MR. SCHMIDT: He's here. You can
18 just ask him for the number then.

19 MR. MOSS: Yes.

20 THE WITNESS: Well, you know
21 actually in this case if you want to put down
22 the number that you guys had then I would

1 rather confirm it than have to sit up here and
2 do math.

3 BY MR. MOSS:

4 Q Sure. I think it's . And
5 I'll help you out, sir.

6 A Okay.

7 Q I don't mean for it to be a test.
8 I think it's on the Golf chart numbers 12,
9 advertisers 12, 13 and 15. Do those look like
10 Tennis Channel advertisers to you?

11 A Yes, they are.

12 Q And those are all large companies.
13 Correct, sir?

14 A Yes.

15 Q And they advertise across almost
16 every network on Comcast Exhibit 801. Right,
17 sir?

18 A Yes.

19 Q Thank you. Thank you, Mr. Herman.
20 We're done with that exhibit.

21 A Okay.

22 Q Now, Mr. Herman, you've pitched to

1 advertisers on the theory that advertising on
2 both Tennis Channel and Golf Channel doesn't
3 have to be a substitute. It can be
4 complimentary. Correct, sir?

5 A Yes.

6 MR. MOSS: Your Honor.

7 JUDGE SIPPEL: Yes.

8 MR. MOSS: I think given the time
9 we don't have any more questions for Mr.
10 Herman.

11 JUDGE SIPPEL: Thank you.

12 Any redirect?

13 MS. POGORILER: Yes, Your Honor.

14 MR. OSHINSKY: Your Honor.

15 JUDGE SIPPEL: I'm sorry.

16 MR. OSHINSKY: We have just a
17 couple questions.

18 BY MR. OSHINSKY:

19 Q I'd like to go back to the
20 original chart that you used in 189.

21 JUDGE SIPPEL: It's Mr. Oshinsky.
22 Is that correct?

1 MR. OSHINSKY: Yes.

2 JUDGE SIPPEL: Thank you.

3 BY MR. OSHINSKY:

4 Q You tell us you have various
5 figures segmented out here. On 188, you have
6 the dark green percent and the lighter
7 green percent representing certain numbers
8 of advertisers. Could you tell us what those
9 segments mean again?

10 A Yes. The percentages actually
11 represent the revenue generated by those
12 advertisers. So if you add it up in -- I'm
13 sorry. In Exhibit C if you added up the
14 revenue that the Golf Channel top 30 accounts
15 represented. So I added up all the green bars
16 in Chart C and those were the same accounts
17 that Tennis Channel competes with, meaning the
18 accounts the Tennis Channel currently has
19 billing with.

20 I divided that by the total
21 dollars that the top 30 accounts represented
22 so that this chart that you pointed to in 188

1 says that Tennis Channel did business with
2 accounts on Golf Channel that represented
3 percent of the revenue they received from
4 their top 30 accounts. Tennis Channel made
5 presentations to accounts that represented
6 percent of the revenue that Golf Channel
7 received from those top 30 accounts.

8 Q My question is going to be fairly
9 general.

10 A I'm sorry.

11 Q My question is what common
12 denominators do those two groups -- what do
13 those two groups have in common? In other
14 words, what are the characteristics of those
15 particular advertisers that they share?

16 A Well, for this chart, the
17 characteristic that they shared was that they
18 both -- The green accounts spent money
19 advertising on Golf Channel and they also
20 spent money advertising on Tennis Channel.

21 Q I'm actually asking you more
22 broadly. The particular companies that do

1 that advertising.

2 A Oh.

3 Q What characteristics do those
4 particular companies share in your experience
5 in terms of what kinds of audience they're
6 looking for.

7 A Oh, I see. I'm sorry. To the
8 best of my recollection, the overwhelming
9 majority of those companies we participated in
10 the sports portion of their budget. They had
11 a budget allocated to buy sports channels and
12 we competed for those sports dollars.

13 So from programming category they
14 were looking to buy sports. These tend to be
15 more affluent accounts. So, in the case of
16 , the buy was for their upper
17 end . In the case of , it was
18 for the upper end car. So my sense is that
19 they wanted to reach adults that were more
20 affluent that would be more likely to purchase
21 their products.

22 Q Is there anything else they would

1 have in common or is that the basic common
2 denominator?

3 A My recollection is in terms of
4 demographic they were all adult demographics.
5 I don't believe
6 , all
7 bought off of adults 25 to 54. So they didn't
8 have a break as far as men or women. It was
9 bought off of adults.

10 Q Okay. And, then for 189, would
11 your description be the same?

12 JUDGE SIPPEL: Tennis Channel
13 #189.

14 MR. OSHINSKY: Yes. I'm sorry.
15 Tennis Channel #189. It's just the other
16 chart. The Versus versus Tennis, yes.

17 THE WITNESS: Yes. It's
18 essentially the same. Some of the accounts on
19 189 they represented a large amount of
20 advertising on Versus.

21 I believe is a direct response
22 account. I don't believe that they specify

1 demographics and define just a lot of bulk and
2 volume.

3 But I believe essentially it's the
4 same. , it's a credit
5 card. And my recollection is that that was
6 also adults 25 to 54 and they were targeting
7 affluent consumers that were spending a lot of
8 money on credit cards.

9 BY MR. MOSS:

10 Q So it's age and affluence in
11 effect is the major common denominator in
12 those groups.

13 A Yes. And I think it's -- And
14 additionally not all the agencies use third
15 party consumer spending research. In Tennis
16 Channel's case we do. So in the case of
17 and in the case of we
18 would be able to go to these accounts and get
19 third party research that would say how likely
20 or unlikely are our viewers to make this
21 purchase. That is consumer behavior. And my
22 assumption is that the agencies want to reach

1 people that are more likely to purchase that
2 kind of product.

3 And looking at the list my guess
4 is that the same research applied to Golf
5 Channel's case and Versus. When they looked,
6 they said that Golf Channel viewers are
7 probably more likely to buy than --
8 That they're more likely than the average
9 viewer of the channel just as Tennis Channel
10 did. So I think it's the consumer behavior is
11 also a common denominator.

12 Q And, for the percentage of the
13 charts on the comparison with Versus, you have
14 the segment which is light yellow
15 percentage and on Golf Channel you have a
16 segment of percent. What is your
17 description of that group again? I wasn't
18 clear about that.

19 A The light yellow are accounts that
20 Tennis Channel did not approach for
21 advertising and did not receive any
22 advertising revenue from.

1 Q Now can you explain why they
2 didn't approach that segment?

3 A Some of these accounts honestly
4 I'm not sure of because when this report was
5 pulled it was done by some of these corporate
6 names that we weren't familiar with. My guess
7 is that some of those accounts were what we
8 refer to as endemic accounts that applied to
9 specific sports on Versus similar to in Golf
10 Channel's case the golf club/golf ball
11 manufacturers. So that's my guess as to why
12 someone from Tennis Channel would not have
13 called on that account.

14 Q Okay. I want to go to your
15 description of the freeview that the Tennis
16 Channel puts on, you testified they put on.
17 Can you tell us? Are there costs associated
18 with the freeview like there would be with
19 other programming that Tennis Channel puts on?

20 A I can't speak if there were
21 programming costs.

22 Q Yes, their production costs.

1 A I can't speak to whether there are
2 production -- I know there are -- I can't
3 speak to whether -- I'm sorry -- there are
4 production costs for the freeview period.

5 Q Well, do you know whether it's
6 free for the Tennis Channel to put that kind
7 of programming on? Is it free for them or are
8 there costs associated with it? If you don't
9 know, you don't know.

10 A I don't believe there are any
11 costs for us. I think the free part is that
12 there is no cost to the MSOs, the terrestrials
13 and the satellites. So where they would
14 normally pay a monthly fee for subscriber to
15 get the French Open, they don't have to pay
16 anything to allow their consumers to watch
17 Tennis Channel during that two week period.

18 So they run promo spots. DirecTV
19 for instance would run promo spots a couple
20 days before the French Open saying if you want
21 to watch the French Open turn to Channel 217
22 and you can watch Tennis Channel even if you

1 don't have that -- even if you didn't pay for
2 that tier.

3 Q Okay. And what is the main
4 purpose of running those freeviews? And you
5 may have testified to this already. To your
6 knowledge.

7 A Well, from an ad sales point of
8 view, my department likes it when we do that
9 because it's a lot easier for us to get
10 advertisers in the time periods where we tell
11 them we have more distribution.

12 Q And your testimony is you notice a
13 direct correlation between those free periods
14 and advertising revenue.

15 A Absolutely.

16 MR. OSHINSKY: Okay. That's all
17 we have, Your Honor.

18 MS. POGORILER: Your Honor, may I?

19 JUDGE SIPPEL: Your witness.

20 REDIRECT EXAMINATION

21 BY MS. POGORILER:

22 Q Following up just quickly on some

1 of those questions just to clarify, do you
2 have any understanding as to whether Tennis
3 Channel pays rights fees for the content it
4 airs during the freeviews?

5 A My understanding is that you pay -
6 - Do you know what? As I'm thinking about it,
7 it's really out of my daily work. I don't
8 really know what the production and fees and
9 fee arrangements are. So I'd rather not
10 speculate.

11 MS. POGORILER: Okay.

12 JUDGE SIPPEL: You have no
13 knowledge or you just?

14 THE WITNESS: I'm not sure.

15 BY MS. POGORILER:

16 Q Mr. Herman, you were asked about
17 Tennis Channel's competition for ad business
18 with lifestyle and news networks. Do you
19 recall that?

20 A Yes.

21 Q Are those networks a major source
22 of advertising business for Tennis Channel?

1 A Do you mean are the accounts?

2 Q Yes. Are those networks a major
3 source of ad competition for Tennis Channel?

4 A They're not a primary source of ad
5 competition.

6 Q And what networks are your major
7 competitors?

8 A The sports networks are our major
9 competitors, the single sports networks that
10 I mentioned earlier and the multi-sports
11 networks, ESPN, the family of ESPN channels.

12 Q Now Mr. Moss showed you a slide
13 with a woman on it that was excerpted from a
14 PowerPoint. Do you recall that slide?

15 A Yes.

16 Q It's #664. Is that slide
17 something you use in pitching advertisers?

18 A I haven't used it before.

19 Q What do you tell advertisers about
20 Tennis Channel's gender profile?

21 A I tell advertisers that we have an
22 affluent, gender-balanced audience but that we

1 tend to skew more towards men. And we think
2 it's a benefit for the upscale advertisers
3 that we speak to that they can get a
4 commercial in front of women that also are
5 decision makers. We tell them that our
6 audience is about percent male and
7 percent female. And we think it's a selling
8 point.

9 Q Now Mr. Moss showed you a chart
10 showing ad spending across a number of
11 networks. Do you recall that chart? It's
12 Comcast Exhibit 801.

13 A Yes.

14 Q Are the networks -- I'll just list
15 a few from the beginning, NBC, ABC, CBS, CNN.
16 Are those networks your Tennis Channel's
17 primary competitors?

18 A I wish they were, but they're not.

19 Q And how do you know that they
20 aren't?

21 A Because we don't participate in
22 the broadcast up front market. We don't

1 participate in the broadcast scatter market.

2 It's a separate marketplace from cable.

3 Q Now I want to return to the charts
4 attached to your declaration at Tab B. I
5 think you mentioned that you excluded
6 companies that make, for instance, only golf
7 specific products. Do you recall that?

8 A Yes.

9 Q Why did you exclude those
10 companies from your analysis?

11 A The purpose of the analysis was to
12 try to make a fair representation. If you
13 were on the buying side, what channels you
14 would consider buying for your product. And
15 we did not -- I did not feel that the people
16 that owned the golf ball manufacturing
17 companies would consider Tennis Channel their
18 first option to advertise.

19 So I wanted to be able to say just
20 simply that if you look at the base of
21 advertisers -- their decision of where they
22 want to spend their money -- that they spend

1 their money in sports. They spend their money
2 on Golf. They spend their money on ESPN. And
3 they spend money on Tennis Channel.

4 And to the extent that we have a
5 handicap in 25 million homes we're the least
6 distributed channel of all the sports channels
7 that it was pretty amazing I thought that
8 there was that many accounts that we were
9 still able to do business with that bought
10 other sports channels that have larger
11 distribution.

12 Q Now did you or any of our ad sales
13 staff go out on pitches or presentations
14 specifically in order to make the target
15 numbers here look bigger than they otherwise
16 would be?

17 A No.

18 Q I'm just referring briefly to the
19 Venn diagram that Mr. Moss drew on this chart
20 behind me. Without naming specific names if
21 you're able to do you have any understanding
22 as to whether Tennis Channel gets business

1 from any of the Golf Channel top 50 or top 30

2 -- Is it top 30?

3 A Yes.

4 Q Top 30 advertisers that are among
5 Tennis Channel's clients but not among its top
6 30 clients?

7 A Yes. And I believe that that is
8 what I was trying to show in the final
9 document, in the final chart. Let me find it
10 and I'll tell you. I'm sorry.

11 I believe that the difference
12 between Mr. Moss' chart and my chart is that
13 Mr. Moss compared the top 30, overlap between
14 Tennis Channel's top 30 accounts and Golf
15 Channel's top 30 accounts. And it's a little
16 bit unfair because there's no way that our top
17 30 accounts can generate as much money on
18 average as Golf Channel's because we're in
19 two-thirds less distribution. And we can't
20 charge that much. We're a much smaller
21 network.

22 So our 20th biggest amount might

1 end up being Golf Channel's 120th account. So
2 this chart took our best accounts and said,
3 "Okay. Where else are they spending money and
4 are they against other sports networks?"

5 Q Mr. Herman, do you believe Tennis
6 Channel would be better positioned to compete
7 for the top Golf Channel accounts that aren't
8 in the center of this diagram if its
9 distribution were higher?

10 A Yes. I mean -- Yes.

11 MS. POGORILER: That's all I have,
12 Your Honor.

13 JUDGE SIPPEL: Does that raise
14 anything from your side?

15 MR. MOSS: Nothing from our side.

16 JUDGE SIPPEL: Bureau? Nothing?

17 MR. OSHINSKY: Nothing.

18 JUDGE SIPPEL: I just have one
19 question. You were very specific about your
20 target group, core group, and the ages 35 to
21 64. Right? Then you talk about an affluent
22 group. Do you have a -- Is there a measure

1 for what say the range of the household
2 income is you're looking for?

3 THE WITNESS: Yes. I mean there's
4 a third party research company called
5 Mendelsohn that measures media habits and
6 viewing in \$100k plus homes. That's their
7 sample size.

8 And we use that data. And they
9 rank the household income of 83 cable channels
10 based on the percent of people that watch that
11 channel that live in \$100k plus homes and then
12 they compare it to what the U.S. average is.
13 And Tennis Channel in terms of household
14 income is within the top, is ranked in cable
15 within the top five channels, meaning we're
16 much more likely to have viewers that live in
17 affluent homes than the average person.
18 That's why we conclude and that's how we use
19 the data that we're an affluent channel.

20 JUDGE SIPPEL: Okay. But it's
21 \$100,000 plus. So anybody, any household,
22 that was earning \$100,000 and then over and

1 above that would be your target. Is that the
2 idea? Or the core group?

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: All right. That's
5 all I have.

6 THE WITNESS: We do business with
7 other people but that's our --

8 JUDGE SIPPEL: I know. This is
9 what you're after. Okay. That's all I have.

10 Are we all set?

11 MR. MOSS: Thank you, Your Honor.

12 JUDGE SIPPEL: You're excused.

13 THE WITNESS: Thank you.

14 JUDGE SIPPEL: Thank you very
15 much.

16 (Witness excused.)

17 Now it's 12:00 noon. Are we on
18 schedule? Behind schedule?

19 MR. SCHMIDT: We're doing very
20 well with schedule. We can start our other
21 witness, although it may make sense given
22 where we are to take our lunch break.

1 JUDGE SIPPEL: That's what I was
2 just going to suggest.

3 Who is the next witness by the
4 way?

5 MR. SCHMIDT: It's Mr. Brooks, one
6 of our experts.

7 JUDGE SIPPEL: Mr. Brooks is an
8 expert. Okay. All right. And how long
9 should his testimony take?

10 MR. SCHMIDT: I don't know how
11 long the cross will take. The direct will
12 take probably 30, 45 minutes, somewhere in
13 that neighborhood.

14 JUDGE SIPPEL: Okay. Do you have
15 any idea? I know you can't say for sure.

16 MR. TOSCANO: A couple hours.

17 JUDGE SIPPEL: A couple hours.

18 MR. TOSCANO: An hour or so.

19 JUDGE SIPPEL: So most of the
20 afternoon. It has to be.

21 MR. SCHMIDT: I propose we break
22 for lunch.

1 JUDGE SIPPEL: I'm going to do
2 that. I'm trying to just think -- It's 11:50
3 a.m. Let's try and get back by 1:10 p.m. Is
4 that doable?

5 MR. TOSCANO: Yes.

6 JUDGE SIPPEL: Okay. 1:10 p.m.
7 I'm usually the one that violates. Okay.
8 We're in recess until 1:10 p.m. and then we're
9 going to see Mr. Brooks on or near the stand.
10 Off the record.

11 (Whereupon, at 11:50 a.m., the
12 above-entitled matter recessed to reconvene at
13 1:10 p.m. the same day.)

14 JUDGE SIPPEL: Are you ready to
15 proceed?

16 MR. SCHMIDT: Yes, may we call our
17 next witness, Your Honor?

18 JUDGE SIPPEL: You certainly may.

19 MR. SCHMIDT: May we call Mr. Tim
20 Brooks.

21 JUDGE SIPPEL: Mr. Brooks.

22 MR. CARROLL: Your Honor, I've

1 been relegated farther and farther down the
2 end. They're going to have me out the door
3 soon. My colleague, Mr. Toscano, will be
4 handling Mr. Brooks --

5 JUDGE SIPPEL: Good afternoon, Mr.
6 Toscano.

7 MR. TOSCANO: Good afternoon, Your
8 Honor.

9 JUDGE SIPPEL: I'll have to
10 advance to the oath part.

11 WHEREUPON,

12 TIMOTHY BROOKS
13 was called as a witness and, after having been
14 first duly sworn, was examined and testified
15 as follows:

16 JUDGE SIPPEL: Thank you.

17 MR. SCHMIDT: Thank you, Your
18 Honor.

19 JUDGE SIPPEL: Mr. Schmidt.

20 MR. SCHMIDT: Yes.

21 JUDGE SIPPEL: Please proceed.

22 DIRECT EXAMINATION